

रजिस्ट्र नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बृहस्पतिवार, 20 दिसम्बर, 1984/29 अग्रहायण, 1906

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 6th December, 1984

No. 3-21/84-ELN.—The Election Commission of India's notification No. 82/HP-1A/(7/82)/84, dated the 29th November, 1984 corresponding to 8 Agrahayana, 1906 (Saka), along with its Hindi Version, containing the Judgement dated the 11th October, 1984 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 7 of 1982, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN,
ASHOKA ROAD,
NEW DELHI-1,

Dated the 27th November, 1984
Agrahayana 8, 1906 (Saka)

NOTIFICATION

No. 82/HP-IA/(7/82)/84.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Judgement, dated the 11th October, 1984 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 7 of 1982.

भारत निर्वाचन आयोग

अशोक मार्ग,
नई दिल्ली-110001,
29 नवम्बर, 1984

दिनांक
अग्रहायण 8, 1906 (शक)

अधिसूचना

सं 82/हि० प्र०...वि० सं०/(7/82)/84.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं० 7 में हिमाचल प्रदेश उच्च न्यायालय शिमला के तारीख 11 अक्टूबर, 1984 का निर्णय एतद्वारा प्रकाशित करता है।

H. S. THAKUR,

The petitioner has challenged the election of the respondent by filing this election petition and has prayed that the election of the respondent be declared void and the costs of the petitioner be also awarded to the petitioner.

A few relevant facts may be stated. In the Extraordinary Rajpatra of Himachal Pradesh dated 17th April, 1982, a notification under sub-section (2) of section 15 of the Representation of the People Act (The Act in short) was published and the Governor of Himachal Pradesh called upon all the Assembly Constituencies in the State to elect members in accordance with the provisions of the Act and all the Rules and Orders made thereunder. Another notification of the same date was published in the Extraordinary Rajpatra of Himachal Pradesh in pursuance of the provisions of section 30 of the Act. The Election Commissioner with respect to the said elections, appointed the programme of the election. Accordingly, 24th April, 1982 was notified as the last date for making nominations, 26th April, as the date for scrutiny of nominations, 28th April, 1982 as the last date for the withdrawal of candidatures, 19th May as the last date on which a poll, if necessary, was to be taken and 24th May, 1982 as the date before which the election was to be completed. The petitioner and the respondent besides S/Shri Kanshi Ram and Comrade Vidhi Chand were the contesting candidates from 46-Nagrota Constituency of Himachal Pradesh. The respondent was declared as an elected candidate.

On the pleadings of the parties, the following issues were framed:

- (1) Whether Shri Kanshi Ram, who was a candidate in the election, is a necessary party to the petition in view of the allegations made in paras 3, 4 and 19 of the Election Petition? If so, what is its effect?

OPR.

- (2) Whether the contents of annexure 'PA' fall within the definition of corrupt practices as defined under section 123 (3), (3A) and (4) of the Representation of the People Act? O.P. Parties.
- (3) Whether the respondent, his agent or any other person with his consent, published or distributed himself, through his agent or any other person with his consent, annexure 'PA' as alleged in the Election Petition? O.P.P.
- (4) Whether the respondent, his agent or any other person, with his consent, appealed to the voters to vote in his favour and to refrain from voting in favour of the petitioner on the basis of the caste and community, as contained in the Election Petition? If so, what is its effect? O.P.P.
- (5) Whether the respondent through the contents of annexure 'PA' actually promoted feelings of enmity and hatred between the voters of the constituency on the grounds of caste and community with a view to prejudicially affect the election of the petitioner? If so, what is its effect? O.P.P.
- (6) Whether the contents of annexure 'PA' pertain to the personal character and conduct of the petitioner and were even false to the knowledge of the respondent and he did not believe the same to be true? If so, what is its effect? O.P.P.
- (7) Relief.

It may be pointed out at the outset that issue No. 1 was treated as a preliminary issue at the request of the learned counsel for the parties. The arguments were heard on the preliminary issue and the same was decided against the respondent holding that Shri Kanshi Ram was not a necessary party to the election petition. Accordingly, issue No. 1 does not survive for determination.

It is desirable to extract the relevant paras of the election petition containing allegations against the respondent:

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3. That S/Shri Virander, Advocate of Kangra, Kali Dass, Pradhan Massal Panchayat, Shri Ram Chand Bhatia, respondent, Kanshi Ram, Janata Party candidate and Shri Kidar Nath Bassi who was election-in-charge in the Constituency for B.J.P. joined hands amongst themselves and started a vilification campaign against the character and conduct of the petitioner. They came out with a poster like Annexure-PA allegedly purported to have been published by Shri Parma Nand, brother of Shri Kanshi Ram nonetheless as would be clear from the paragraphs hereinafter contained that it was the respondent who was instrument in preparing the draft as well as getting the posters printed in the name of Shri Parma Nand.
 4. That these posters came out for the first time in the Constituency during the last week of March, 1982. However, whispering campaign assassinating character and conduct of the petitioner had started by the respondent in collusion and connivance with Shri Kanshi Ram, Janata candidate. Shri Kanshi Ram, the Janata candidate, is the Pradhan of Gram Panchayat, Pathiar and the respondent immediately before his election, was also Pradhan of Gram Panchayat, Amtrar and both of them have close relations with each other since long time back.
 5. That the contents of the poster and facts stated therein are false to the knowledge of the respondent and the respondent does not believe these facts to be true. The bare perusal of Annexure 'PA' would show that the contents are in relation to the personal character and conduct of the petitioner. These statements of facts contained in Annexure 'PA' are not only published and circulated through out the constituency by the consent of the respondent but as a matter of fact these posters have been got printed and circulated by the respondent himself surreptitiously in the name of Shri Parma Nand. The contents of this poster malign the conduct of the petitioner as an M.L.A. and Minister in addition to his personal character.

6. That the contents of the poster at Annexure 'PA' contain appeal to the voters to refrain from voting in favour of the petitioner on the ground of caste and community which has prejudicially affected the election of the petitioner.
7. That the respondent through the contents of Annexure 'PA' has actually promoted feelings of enmity and hatred between the voters of the constituency on the grounds of caste and community with a view to prejudicially affect the election of the petitioner.
8. That the posters at Annexure 'PA' were distributed in the constituency by the respondent as well as B.J.P. workers with the consent of the respondent. These posters were also extensively and conspicuously quoted and referred to by the respondent and other workers of the B.J.P. throughout the constituency in public meetings and corner gatherings.
9. That on 7-5-1982 a meeting was organised by the B.J.P. at village Baroh in the constituency which was attended amongst other by Vaid Tihru Ram, Pradhan, Gram Panchayat, Baroh and Pathanu Ram of the village. The posters at Annexure 'PA' were distributed amongst audience and contents were read out by the speakers asking the voters not to vote for the petitioner whose conduct and character is mentioned in the poster, Annexure 'PA'.
10. That on 14-5-1982 a meeting was organised by the respondent and B.J.P. workers at village Kandi Dhollaru. Shri Kishori Lal Bhardwaj of the village was amongst those who attended the meeting. The respondent, Shri Ram Chand Bhatia, was present in the meeting and he also addressed the audience. In this meeting the posters, Annexure 'PA' were distributed in the entire village before the start of the meeting and contents thereof were referred to and read over in extense by the respondent and other B.J.P. workers at the spot.
11. That on the same day, i.e. 14-5-1982, another meeting was organised by the respondent and his workers at village Bhaniarkar in the constituency which was attended amongst others by Shri Fitu Ram contractor of the village wherein also respondent and his workers distributed the posters Annexure 'PA' and also referred to the contents in the meetings and called the voters to refrain themselves from casting their votes in favour of the petitioner. On the same day, Shri Fitu Ram contractor after attending the meeting went to meet Shri Kishori Lal Bhardwaj of Kandi Dhollaru to discuss about the false facts and contents of the posters Annexure 'PA' which have also created hatred and enmity among the Ghirth community by which the readers and listeners of the contents of the posters, Annexure 'PA' are persuaded to refrain themselves from voting in favour of the petitioner.
12. That on 17-5-1982 at village Dhaloon a corner meeting was organised by the workers of the B.J.P. and the contents of the posters, Annexure 'PA' were read over and explained to the audience. These posters were also distributed in the village house to house by the workers of the B.J.P. This meeting was attended amongst others by Krishan Kumar and Udho Ram of the village.
13. That similarly, on the same day, i.e. 17-5-1982, at 53-Mile (in village Rajiana) in the constituency a big public meeting was organised by the workers of the B.J.P. and posters Annexure 'PA' were distributed throughout the village. Many posters were pasted on the trees, walls and other available spaces in the village. S/Shri Tara Chand Vaid who is Kohli of the village and Madho Ram amongst others had attended this meeting and saw the workers of B.J.P. pasting and distributing the posters, Annexure 'PA'.
14. That on 17-5-1982 at village Baldhar the respondent alongwith other B.J.P. workers campaigned and distributed personally the posters, Annexure 'PA' after reading its contents to the voters present nearby. The respondent was heard reading contents

of the posters and was seen distributing the same in the village Baldhar amongst others by S/Shri Bihari Lal and Jaunki Ram.

15. That in Nagrota Bagwan Bazar, Mr. Sharma, Proprietor of Sharma Glass house along with other two-three workers of the B.J.P. used to distribute and throw hundreds of posters, Annexure 'PA' on Motor Cycles from one and to the other of the Bazar. The flags of B.J.P. used to fly on these motor cycles. Shri Kidar Nath Bassi who was, as already stated, in charge of the election campaign of the respondent also used to distribute these posters, Annexure 'PA' from shop to shop in the Bazar at Nagrota Bagwan in addition to maligning the character of the petitioner by referring to the contents of the posters at Annexure 'PA' whereby the result of the election of the petitioner has been prejudicially affected and the election prospects of the respondent have been enhanced.
16. That on 6-5-1982, the respondent accompanied by other workers of the B.J.P. visited village Hatwas and met amongst others Shri Prem Chand, Pardhan, Gram Panchayat, Hatwas and distributed posters Annexure 'PA' Shri Prem Chand, Pardhan also received one such poster from the respondent. The respondent also canvassed that the voters of the village including Shri Prem Chand Pardhan not to cast their votes in favours of petitioner as they have now come to know through the contents of the posters Annexure 'PA' that the petitioner is such a person who does not deserve their votes.
17. That on 17-5-1982, a public meeting was organised at Nagrota by the B.J.P. which was to be addressed amongst others by Shri Shanta Kumar, B.J.P. leader of Himachal Pradesh. Shri Gurdeep Singh, a prominent worker of B.J.P. of Nagrota Bagwan also addressed this meeting and extensively quoted from the contents of the posters Annexure 'PA' and appealed to the voters not to vote for the petitioner in view of the facts stated in it. The speech delivered by Shri Gurdeep Singh at this meeting was tape-recorded by Shri Barbhajan Singh of Nagrota in addition to the speeches delivered by S/Shri Shanta Kumar and others.
- 17-A. That on 12-5-82, at village Mallan the respondent along with other B.J.P. workers organised a corner meeting of the villagers and read over to them the contents of the posters Annexure 'PA' and also distributed these posters in the village. The respondent, during the course of the canvassing in the village met S/Shri Nek Ram, Gian Chand among others and persuaded them not to vote in favour of the petitioner in view of the facts stated in Annexure 'PA' which were also read over to them.
18. That on 15-5-82, the respondent along with other workers of the B.J.P. visited village Sunhi in the constituency and similarly distributed and read over posters Annexure 'PA' and pleaded with the voters of the village to cast their votes in view of the facts of Annexure 'PA' in favour of respondent and refrain from casting votes in favour of the petitioner. The respondent and his workers have canvassed as such to Shri Prem Dass, Pardhan Gram Panchayat, Sunhi and Shri Pathanu Ram of the same village among other voters.
19. That at the time of counting which was held in the premises of G.A.V. High School, Kangra, Shri Kanshi Ram and the respondent were behaving themselves in such a way as if both of them have contested the election for winning the same in favour of respondent alone. Moreover, after the declaration of the result in favour of respondent on 20-5-1982, a procession was taken out in the Bazar of Nagrota Bagwan to celebrate the victory of the respondent, on 21-5-1982. It is pertinent to mention that in this procession which was going on foot not only the respondent who was profusely garlanded but along with him Shri Kanshi Ram was also walking with the same amount of garlands and both of them were acknowledging the greetings of the people with folded hands."

In the reply to the election petition, the respondent besides taking some preliminary objections has denied the allegations, to the extent as contained in the reply:

- “3. The contents of this para are denied in so far as it relates to the respondent. The respondent was in no way a party to bringing out the poster Annexure ‘PA’ which clearly shows that it was issued by one Parmanand of Pathiar after having been got printed at Modern Press, Nagrota.
4. According to this para the poster like Annexure ‘PA’ had appeared in the constituency during the last week of March when there was only a possibility that the elections might be held in June, 1982. It is, however, incorrect that the respondent had any connection with Shri Kanshi Ram who in fact had opposed the respondent in the election and was himself a candidate on behalf of the Janata Party.
5. In reply to this para it is submitted that the contents of poster, Annexure-PA in no way tarnished the personal character of the petitioner. It only relates to the conduct of the petitioner as an M.L.A. and as a Minister during the period of fifteen years from 1967 onwards when he was elected as M.L.A. for the first time.
6. The contents of this para are not legally tenable and there is no appeal in poster, Annexure PA, that the voters should refrain from voting in favour of the petitioner on grounds of caste and community. In fact all the contesting candidates except Shri Bidhi Chand belonged to the same community.
7. The contents of this para are also denied as the contents of poster, Annexure PA, cannot be said to promote the feelings of enmity and hatred between the voters of the constituency on grounds of caste and community.
8. The contents of this para being vague need no reply. However, it is denied that the respondent or anybody at his instance or with his consent distributed the posters like Annexure PA.
9. The contents of this para are denied vehemently, as no meeting at the instance of the respondent was held on 7-5-1982 at village Baroh. The respondent never attended any meeting at Baroh on 7-5-1982.
10. The contents of this para are also denied. The respondent did not call any meeting on 14-5-1982 at village Kandi Dholru. Even otherwise there was no question of the respondent distributing posters like Annexure PA as these posters contain an appeal for casting the votes in favour of Shri Kanshi Ram of Janata Party and not in favour of the respondent. The respondent by no stretch of imagination can be expected to propagate for the success of his opposing candidate.
11. The contents of this para are denied. The respondent never attended any meeting on 14-5-1982 at village Baniarkar in which posters like Annexure PA might have been distributed.
12. The contents of this para are denied for want of knowledge. However, if any person had organised any such meeting, they must have done so at their own and had no authority on behalf of the respondent to do so.
13. The contents of this para are also denied for want of knowledge. It is also denied that any person had the authority on behalf of the respondent to distribute Annexure PA, posters, or to paste them on trees and walls etc.
14. The contents of this para are denied. The respondent never read over contents of poster to anybody nor did he distribute the same to anybody on 17-5-1982.
15. The contents of this para are denied for want of knowledge. However, it may be added that Mr. Sharma of Sharma Glass House was never authorised by the respondent to distribute the posters or otherwise to malign the character of the petitioner in any manner whatsoever.

16. The contents of this para are also denied. The respondent had canvassed voters in different villages in his own name or in the name of Bhartiya Janata Party including its leaders. There was no occasion for the respondent to distribute posters, Annexure-PA, which in any case were to his detriment.
17. In reply to this para it is submitted that a public meeting was organised on 17-5-1982 by the B.J.P. in which Shri Shanta Kumar was the main speaker. The respondent and Shri Shanta Kumar had reached the meeting at the fag end of the meeting and after their arrival the meeting was addressed by Shri Shanta Kumar only. If Shri Gurdeep Singh or any other person in that meeting had referred to the contents of poster Annexure-PA, it was without authority or consent of the respondent.
- 17-A. This para has been wrongly numbered as para 17-A. The contents of this para are denied.
18. This para has been wrongly mentioned as para No. 18. The contents of this para are also denied.
19. This para has been wrongly numbered as para No. 19. The election had already been over and any subsequent conduct of the respondent or Shri Kanshi Ram cannot be the basis for influencing the voters. It is, however, denied that Shri Kanshi Ram was happy with the election of the respondent. He may have derived satisfaction and sadistic pleasure from the defeat of the petitioner. In fact, even the petitioner had formally congratulated the respondent on his success."

The petitioner has annexed with his election petition the poster marked 'PA' but exhibited as Ex. P. 1. Since the contents of the poster Ex. P. 1. which is printed in Hindi, in relevant and material for the determination of the surviving issue, it is desirable to reproduce its literal English translation for a ready reference:

"NOTICE

(One has one's own view point)—

Fifteen years' 20-Point Programme of Shri Hardyalji and reply thereto by Parmanand, keeping in view Janata Party Candidate Chaudhary Kanshi Ram, (Ex-Serviceman), Pathiar.

1. Like Hardyalji I will never say that I have Raj Yog on my fore-head (destined to rule) and I have not acquired this position because of your votes.
2. Like Hardyalji I will also not say that the children of Harijans and Ghirth community do not have brains, so I do not employ them in my office. I will rather establish the fact that even the children of Harijans and Ghirths have brains and given opportunity they can also work like the children of others.
3. While Shri Hardyalji was Forest-Minister, 1700 boys were employed in Dhauladhar Project and 300 boys were recruited as Forest Guards. Besides, boys were also employed in Transport, Electricity, Agriculture, Hospital and as Patwaris. We want to ask it from Shri Hardyal as to how many boys have been employed from Nagrota constituency.
4. As Forest Minister, Mr. Hardyal has discontinued 'Chuharam' of the forest and eliminated the income of village Panchayats. Why so?
5. We want to ask it from Mr. Hardyal as to how many persons of Nagrota constituency have been appointed as Gazetted Officers during his 15 years' tenure as M.L.A. and Minister.
6. Had Mr. Hardyal provided employment to 5 boys per Panchayat per year during

his 15 years' tenure as M.L.A. and Minister, two thousand children of Nagrota constituency would have been employed by now and there would have been no unemployment in Nagrota area.

7. Every party while in power will construct roads, dispensaries, bridges and schools in villages because there is provision for such things in the constitution. Mr. Hardyal is misleading the innocent village folks by saying that he had done all that. This is all false.
8. I want to ask it from the people of Nagrota that an outside has been befooling the people for 15 years on the plea of 'Raj Yog' and even in the capacity of M.L.A. he has been living outside the area of Nagrota in a splendid house worth Rs. 2 lacs at Darhi and thus grinding his own axe. Why so?
9. May I ask if Chaudhary Hardyal being a Ghirth M.L.A. could not find place to stay in the house of some Ghirth or the person of any other community? For the last 15 years we have been seeing him staying along with his car with green flag at the house of one Amirzada (Aristocrat), Seth Saran Dass who is the duplicate of Mr. Hardyal at Nagrota. *Seth Saran Dass*.
10. I am a son of a farmer and labourer. What are the difficulties of farmers and labourers, I will manage to get them removed by the Government.
11. Like Hardyalji I will not try to deceive anyone. If anybody's work would be worth doing I shall definitely do that and if that may not be possible for me to do I will tell that the work cannot be done.
12. I will never stay at the house of Seth Saran Dass rather I would go to the house of some poor man and will help him minimise his sufferings.
13. Like Hardyalji I will not go to the house of a poor at the time when he is dead. I will go to the house of poor, arrange for his medical treatment, provide him with medical aid in hospital and will get the money arranged. But I will not do like Hardyalji who visited the house of late Bararu Ram very poor person of Mauza Sarialakkar Tanautra Tikka Pathiar, who died without medical aid on the day of *Kappar Dhulai* and participated in the meals of *Shok Saradh* in order to befool the people.
14. Like Hardyalji I will also not visit the people on the occasions of marriages etc. If I visit such places in my capacity as an M.L.A. then naturally 40/50 other persons will also gather there and that will add to the expenses of the persons celebrating the marriage. But, of course, if someone invites me before marriage I will go there and will help him in making-up the deficiency, if any.
15. I will never try to befool the poor people as Mr. Hardyal has deceived a very poor old man. Five years ago an old man gave an application to Mr. Hardyal to the effect that he was a very poor man and his son was a matriculate and that Mr. Hardyal should help in providing a job to the boy. Three years thereafter that boy died. When the time to seek votes came, Mr. Hardyal put his hand on the shoulders of the old man and said that he was arranging for the immediate arrival of the appointment orders of his son.
16. Interviews for the posts of Patwaris were held on 30-1-1982 at Dharamshala. Interview cards were issued to 125 boys of every Tehsil, that is to say that 500 boys were called for interview from 4 Tehsils, but only 7 cards were issued to the boys of Nagrota constituency. Mr. Hardyal has got it done deliberately because Mr. Hardyal wanted that the seats in the share of Nagrota constituency should go to Pt. Sant Ram and Sat Mahajan.
17. Panchayat Sangathan of Nagrota Block had passed a resolution 2½ years back that Badoh should be made a Sub-tehsil. During the Janta regime, Shanta Kumarji had ordered to establish Sub-Tehsils at Khundia, Baijnath, Fatehpur (Nurpur)

Bangana (Una), Amb (Una), Badoh (Nagrota), Kotkhai etc. All other Sub-Tehsils have since been established but the establishment of Badoh Sub-Tehsil was withheld by Mr. Hardyal with the view that he may inaugurate its inception when the elections are near and thus mislead the innocent village folks that he has established the Sub-Tehsil.

18. On 18th January, 1981 Ghirth Mahasabha had demanded from the Centre to open recruiting offices of Air Force and Navy at Nagrota but Chaudhary Hardyal had flatly refused to support this demand. Why so?
19. Chaudhary Hardyal has flatly refused to support the demands pertaining to the quota of Backward classes but he managed to obtain admission in the Medical College for his son against a seat of backward classes. Why so?
20. 15 years ago Mr. Hardyal was the President of the Jan Sangh Group of the Tea Garden Trade Union, and joined the Congress after shifting his loyalty. It is for this reason that he does not help the village people to secure the employment. He helps only the children of rich people, that too outsiders. The lands have been given to the tenants on the basis of the provisions of the Constitution of India. Mr. Hardyal has been misleading the innocent tenants saying that it is he who has provided them with lands. It is all false. I earnestly wish the success of Janata Party candidate Mr. Kanshi Ram through your all possible efforts,

PARMA NAND,
r/o Pathiar Halqa,
Nagrota Bagwan.

Modern Press, Nagrota Bagwan.

A perusal of the remaining issues as framed, shows that the substance of these issues is whether the contents of the poster Ex. P. 1 contain such allegations that pertain to the personal character and conduct of the petitioner and were even false to the knowledge of the respondent and he did not believe the same to be true and whether such posters were distributed by the respondent himself, his agent or any other person with his consent.

The evidence produced by the parties may now be considered. The petitioner is P.W. 1. *inter-alia*, he has stated that before the notification of the election, the campaign was started for the assassination of his character by Shree Ram Chand Bhatia the respondent, Shri Kanshi Ram a Janata Party Candidate, Shri Kedar Nath Bassi, election incharge of the Bhartiya Janata Party, Shri Varinder Advocate, and Pradhan Kali Dass of Gram Panchayat, Massal. It is further stated that thereafter by the end of March, 1982, about 100 pamphlets like Ex. P. 1 were seen by him on the showing of certain persons that were distributed. According to him, the pamphlets like Ex. P. 1 were distributed by the aforesaid five persons at Nagrota in a fair. He has further stated that such like posters were extensively distributed by the respondent in thousands in the entire constituency after the election programme was notified. It is pointed out that the subject matter of the pamphlet was explained and read out to the voters. He has asserted that the allegations contained in items 1 to 20 of Ex. P. 1 are totally false. He has further asserted that in the allegations as contained in Ex. P. 1, his character as also his work as an M.L.A. and Minister has been assassinated. He has stated that even communal hatred against him has been created by this pamphlet and by these allegations his election result has been adversely affected, and that was the main reason of his defeat in the election. According to the petitioner, the pamphlet like P. 1 were printed and published as also distributed mainly by the respondent. Though in the pamphlet Ex. P. 1 the name of the publisher is given as Parma Nand resident of Pathiar, halqa Nagrota Bagwan, but this was got published by the respondent and his associates. According to the petitioner, the pamphlet was printed at Modern Press, Nagrota Bagwan. He has asserted that Shri Kanshi Ram, no doubt, was a Janata Party candidate but he was only a candidate

by name and actually he was helping the respondent in the election. According to him, it was a device to help the respondent in the election. He has stated that the conduct of Shri Kanshi Ram was such as to give an impression that he was actually helping the respondent. He has pointed out that at the time of counting of votes, Shri Kanshi Ram was feeling happy when the respondent was leading in the counting of votes and that on the following day when a procession of victory was taken out, the respondent and Shri Kanshi Ram were garlanded and were leading the procession. They were also acknowledging the compliments of the people. In his cross-examination, he has stated that the votes of 'girth' community in this constituency may be about 65%. He has testified that he belongs to 'girth' community and that the respondent also belongs to the same community. It is admitted by him that Shri Varinder Kumar is his brother-in-law. It is testified that for the first time when the pamphlets like Ex. P. 1 were distributed, it was in a 'mela' known as 'Lidwar Mela' which was held on or about 26th, 27th and 28th April, 1982. According to him, in that fair, one or two pamphlets like Ex. P. 1 were handed over to him by some person. He has admitted that after reading the posters, he did not inform the Government to take legal action in issuing such a defamatory poster, as he did not deem it necessary. He has further admitted that he did not issue any counter poster refuting the allegations. He has admitted the persons who told him about the conspiracy against him, even before the pamphlets like Ex. P. 1 were distributed. He has denied the suggestion that the posters like P. 1 were distributed in that fair in thousands. He has stated that there was no campaign made in favour of the candidate of Janata Party in his constituency. According to him, Shri Kahshi Ram was a Janata Party candidate who got less than 1000 votes whereas Shri Vidhi Chand, C.P.I. candidate, secured a little less than 2000 votes in the said election. He has emphasised that the allegation contained in item No. 12 of Ex. P. 1 is very much hitting his personal behaviour towards the voters. He has clarified that Shri Saran Dass is slightly a rich person and by this allegation the intention is that he preferred to stay with this rich person and he ignored all the poor persons in the constituency. He has further emphasised that items No. 1 to 3, 8, 9, 12, 13, 15, 17 and 19 of Ex. P. 1 were such by which directly his personal character is assassinated and that by these allegations his conduct and behaviour is also affected. He has asserted that almost in every item of Ex. P. 1 his conduct as a candidate is affected and further that these allegations were also false. P.W. 2 is Shri Som Prakash Sarotari. He has stated that the posters like P. 1 were printed in his press at Nagrota Bagwan. He also produced the manuscript of the poster Ex. P. 1. He has pointed out that on 3rd March, 1982, the manuscript of the poster was given to him for printing by Shri Kanshi Ram, who had contested the election from the said constituency. It is pointed out by the witness that when he asked Shri Kanshi Ram as to why he did not mention his name in the poster, he told me that Shri Parma Nand is his elder brother and the poster is to be issued in his name. According to him, Shri Kanshi Ram was accompanied by 2/3 persons but he could not mention their names. The witness has further stated that he had printed 3000 posters like Ex. P. 1 by March 26, 1982 and delivered these posters to Shri Kanshi Ram, who was accompanied by some persons. The manuscript of the poster has been marked Ex. P. 3. In this cross-examination, the witness has stated that the manuscript was in the same words as it is. According to him, there were 2/3 persons accompanying Shri Kanshi Ram but the respondent was not seen by him. He has admitted that he had printed the posters for the respondent as also for the petitioner. He has denied the suggestion that at the time when the proof of Ex. P. 1 was approved, Shri Kali Dass had not come to his press. He has asserted that those persons of the party who used to come to him and whose names were entered in those posters also used to come to him. P.W. 3 is Shri Parma Nand. *Inter-alia*, it is stated by him that Shri Kanshi Ram is his cousin brother, and is younger to him. He has deposed that about the end of Falgun Bikrami or beginning of the month of Chaitra, Shri Varinder came to his house along with 2/3 persons. He has further stated that the persons accompanying Shri Varinder were Shri Kali Dass, one 'Bhojki' and 2/3 other persons whom he did not know but could identify. The witness pointed out towards the respondent, Shri Ram Chand Bhatia, and Shri Ganga Ram of Nagrota. He has stated that Shri Varinder is an Advocate at Kangra, who had told him that a poster was to be printed for distributeion in his name but they did not tell him for what purpose the poster was to be printed. He has asserted that he was told that when the time comes he will be told. He has also stated that he is an illiterate person except that

he can sign in Hindi. It is further stated that Ex. P. 3 does not bear his signature as encircled in red. He has also stated that he never got the posters like P. 1 printed and did not make any payment for the publication of such posters. In his cross-examination, he has stated that he knew Shri Varinder for the last about 5/6 years. He has denied that he worked for any candidate in any election. He has also stated that Kali Dass had accompanied Shri Varinder. According to him, he did not take any steps to ascertain the contents of the poster. He has testified that he had not seen any press at Nagrota. P.W. 4 is Shri N. L. Awasthy. He is working as Employment Exchange Officer, Kangra at Dharamshala. According to him, the recruitment to the Government departments can only be made through the Employment Exchange. It is stated by him that there is a Project known as 'Indo-German Dhauladhar Project', Palampur which falls within the territorial jurisdiction of Sub-office Palampur. He has deposed that for this Project in between 1980 to 1982, according to the record, only 15 vacancies were notified and in the Forest Department, according to his office record, only 28 vacancies of different categories were notified by the Employers stationed in the territorial jurisdiction of Tehsil Kangra. According to him, in the Electricity Board within Tehsil Kangra a demand for 38 posts of Class-III and IV employees was received. He has stated that the Deputy Commissioner, Kangra had sent a demand for the candidates for training as Patwaris and only 225 candidates were sponsored during the period commencing from March, 1980 to March, 1982 and from the Transport Department, a demand for 304 persons had come and this demand pertained to four districts, that is, Kangra, Chamba, Hamirpur and Una. According to him from the Health Department, a demand for 65 persons had come to the Employment Exchange, Dharamshala and from Agriculture Department, a demand for one person had been received. He has asserted that the demands for all the above posts related to Class III and IV employees. P.W. 5 is Shri Gopal Krishan Photographer. According to him, a victory procession of the Bhartiya Janata Party was taken out at Nagrota Bagwan and he took photos of that procession. He produced the negatives of the photographs and photographs Ex. P. 4 to P. 9. He has stated that in the photographs Ex. P. 4 to P. 9, he could identify the respondent and Shri Kanshi Ram and that the respondent and Kanshi Ram are garlanded in these photographs. In his cross-examination, he has stated that the photographs were taken at the instance of Bhartiya Janata Party workers. P.W. 6 is Shri Kishori Lal, who is the Vice Chairman of Panchayat Samiti Nagrota Bagwan. According to him, the respondent visited his village 2/3 times. The election meeting had been held by the respondent in his village on May 14, 1982. According to him, the meeting was addressed by the respondent, Shri Ganga Ram of Nagrota Bagwan and Shri Harbhaj and others. He has deposed that the respondent addressed the gathering and also distributed some posters like Ex. P. 1. He has further stated that the respondent had said that the sitting M.L.A. Shri Hardyal, was an outsider and did not belong to the constituency and, as such, he was to be ousted. *Inter-alia*, it is stated by him that he had not been taking any steps for giving employment to the local residents and the unemployment was increasing in this area. He has also stated that the respondent had drawn the attention of the gathering to the poster like P. 1 and had said that the evil-deeds of the petitioner were reflected in the said poster. He exhorted the people there to go through the said posters and were read by numerous persons including the children and that their re-action was that the petitioner had been keeping them in the dark and the public was misled and they became anti-petitioner. In his cross-examination, the witness has admitted that he was well known Congress-man and was in the party for the last 5/6 years. In answer to a question that the posters like Ex. P. 1, which were distributed were of Janata Party. The witness replied that the said poster was a result of the conspiracy of all the parties with a view that at any cost the petitioner be ousted. Again in answer to another question, whether this conspiracy was hatched at his place or in his presence, his reply was that the talk of this type was held at almost every place and with him also and that the idea was to defeat the petitioner at every cost. He has emphasised that he could not name anyone with whom the talk was held but the talk was held almost at all places by all people. According to him, he saw the posters like P. 1 for the first time during the month of May, 1982. He has asserted that he had seen the poster which were pasted at the shop of Hari Ram. He has further asserted in his cross-examination that this was well known that Shri Kanshi Ram was only a dummy candidate and the votes were to be cast in favour of the candidate of Bhartiya

Janata Party. The witness volunteered that the people in the villages were told about the allegations contained in the poster and that the propaganda was that the petitioner had got his son admitted to Medical College, had built a 'kothi' and that the people from outside had been given employment at the cost of the local people. In his cross-examination, he has also emphasised that the respondent had been also distributing the posters like P. 1 which were styled of Janata Party. P.W. 7 is Shri Kishori Lal. He has stated that the respondent had come to his village to hold an election meeting on May 14, 1982, and that he held an election meeting there and had about 40 posters like P. 1 with him and those posters were given to him. According to him, the respondent had told that these posters be read over to the villagers and that they betold that the votes be cast in favour of the Bhartiya Janata Party. He has further asserted that the respondent had said that the petitioner was not a resident of Nagrota Bagwan constituency but an outsider and had built a house at the cost of rupees two lacs. He has also deposed that the respondent had also read the poster like P. 1 in that meeting. In his cross-examination, *Inter alia*, it has been stated by him that he was a retired Army personnel and did not belong to any political party. He has further stated that on the following day of the meeting held by the respondent, the petitioner also visited their village and posters like P. 1 were shown to him. He has stated that due to the mis-deeds contained in Ex. P. 1 they would not vote for him. He has also stated that he did not know Kanshi Ram, a candidate of Janata Party and that he had not come to their village during the election. He has denied the suggestion that the respondent had distributed in that meeting only the posters of B.J.P. and not the poster like P. 1. He has asserted that in fact the respondent had handed over the posters like P. 1 to him for distribution. P.W. 8 is Shri Fithu Ram. *Inter alia*, it is stated by him that he knew the respondent who had reached their village on May 14, 1982 and distributed some posters like P. 1. According to him, the respondent told them that they should read posters and should cast votes for the symbol of lotus flower. In his cross-examination, the witness has admitted that he was the polling agent of the petitioner and that he was an old Congress man and was working for the petitioner for the last about 15 years. In answer to a question in the cross-examination, whether posters like P. 1 were being distributed by the agents of Janata Party and the respondent did not distribute any such posters, the witness stated that it was wrong. He has denied that he was making this statement being an old Congressman. P.W. 9 is Shri Tiru Ram, the Pradhan of Badoh Panchayat. The substance of his statement is that the respondent visited his village and that the population of his village is about 600/700. According to him, the respondent visited his village on May 7, 1982 in connection with the election and held a meeting there. It is stated by him that about 60/70 persons had gathered in that meeting and first of all the posters like P. 1 were distributed. According to the witness, such like posters were distributed by the respondent. In his cross-examination, he has admitted that he was the polling agent of the petitioner. He has also admitted that the posters carrying the symbol of flower were also distributed. He has emphasised that 5/7 posters like P. 1 were distributed by the respondent on that day. P.W. 10 is Shri Falatu Ram, who had been the member of Panchayat Samiti Nagrota from 1975 to 1980. According to him, the respondent organised a meeting on May 7, 1982 and posters were distributed in the meeting. In his cross-examination, he has admitted that he was an old congress-man and was also a polling agent of the petitioner. He has further stated that the respondent was the candidate of Janata Party and the symbol of Janata Party was a flower. He has stated that the election symbol of 'Haldhar' was also of Janata Party. He has emphasised that the respondent was distributing posters which contained the symbol of flower. He has given the names of some of the persons who attended the meeting. P.W. 11 is Shri Prem Dass. The substance of his statement is that the respondent had visited his village 3/4 times. He has specifically stated that he had visited his village on May 5, 1982 and distributed posters and had also addressed the public. It is further stated by him that in that meeting posters like P. 1 containing the symbol of Janata Party were distributed, but it was said that the votes were to be cast in favour of Bhartiya Janata Party. According to him, in the posters like P. 1, there were 20-points which reflected the working of the petitioner and were pasted at different places by the workers of the B.J.P. The posters contained the mis-deeds of the petitioner. In his cross-examination, he has stated that he did not belong to any party but was the supporter of the party having Government and the Government consists of all the parties. He has stated that he

is the Pradhan of Gram Panchayat. According to him, there is one Government but the parties were numerous and that at present the Ministers are of the Congress-party, in Himachal Pradesh. He has asserted that the respondent had distributed posters containing the symbol of flower and also posters containing the symbol of farmer with a plough. It is emphasised by him that this fact was known to everybody that the respondent was distributing the posters like P. 1. P.W. 12 is Shri Pathanu Ram. *Inter alia*, he has stated that the respondent had come to his village, where there are 5/7 shops. According to him, the respondent visited the village on May 15, 1982. He has further stated that the posters like P. 1 containing 20-points were distributed. He has pointed out that the respondent said that the people gathered there should go through this poster and that the votes be cast in favour of a candidate who had the symbol of flower. In his cross-examination, he has stated that Kanshi Ram did not visit their village and that in fact he had not seen Kanshi Ram. He has also stated that he could read Hindi and had read the posters like P. 1. When he was asked to read the poster, he read the same. P.W. 13 is Shri Krishan Kumar. He has stated that on 17th May, 1982, the respondent visited their village and he was accompanied by Shri Kanshi Ram and about 5/6 other workers of B.J.P. It is asserted by him that they had a bundle of posters and distributed the same amongst the workers of their party and also to the people who had gathered there and that the posters so distributed were like Ex. P. 1. According to the witness, the gathering was addressed by the respondent and thereafter by Shri Kanshi Ram and they said almost similar things. According to this witness, *inter-alia*, it was said there that the petitioner says that the sons of 'girth' community and 'chamar' community had no intelligence and were not fit for any service. In his cross-examination, he has admitted that he was an Ex-Army personnel but not a Congress-man and retired in 1972. He has stated that Kanshi Ram was an ex-serviceman and he never visited their village. He has stated that on 17th May, 1982, such like posters were distributed by the respondent.

He has also stated that in his village about 40/50 posters were pasted at conspicuous places. According to him, those posters were pasted by the workers of the respondent. It is stated that the posters contained the symbol of Janata Party and the election symbol of the respondent was a flower. He has asserted that the respondent had distributed the posters like P. 1 and not the posters containing the symbol of flower on that day. He has denied the suggestion that the respondent was distributing posters containing the symbol of B.J.P. but on the contrary he was distributing the posters like Ex. P. 1. P.W. 14 is Shri Udho Ram. According to him, the respondent visited his village on May 17, 1982 and was accompanied by Shri Shanta Kumar, Chief Minister, and 2/3 other workers. It is also stated by him that the respondent held an election meeting on that day and in that meeting the posters like P. 1 were distributed by the respondent. According to him, Kanshi Ram had also addressed the meeting. It is pointed out by him that the respondent said that the petitioner says that he had 'Raj-Yog' on his forehead and that he did not depend upon the votes of the people. According to him, it was also stated by the respondent that the petitioner says that the people of 'girth' and 'chamar' Community had no intelligence and they were not fit for employment. It is pointed by the witness that it was also said by the respondent that the petitioner did not do any development work and had not employed any one in the Forest Department when there were about 1,700 vacancies in the said department. According to the witness, it was also stated by the respondent that the people should keep in view the facts as contained in the poster Ex. P. 1 and the votes be cast in favour of the candidate having the election symbol of flower. It is stated by the witness in his cross-examination that the petitioner had built a 'Kothi' somewhere in 1967-68 and that he did not know the petitioner earlier but came to know of him when he became M.L.A. The witness denied the suggestion that he was deposing falsely being an old Congress-man. P. W. 15 is Shri Behari Lal. He has, *inter alia*, stated that Shri Bhatia respondent reached his village, 80/100 persons gathered there and Shri Bhatia distributed posters like Ex. P. 1. According to the witness, the respondent addressed the people and told them that the posters contained the misdeeds of the petitioner and that they should vote for a candidate having the election symbol of flower. In his cross-examination, the witness stated that he had not read the posters like P. 1 prior to May 17, 1982 though he had seen people carrying such like posters in their hands. P.W. 16 Shri Maya Dass, *inter alia*, has stated that he is the Pradhan of

Gram Panchayat Serathana. He has stated that he knew the respondent Shri Bhatia. According to him, the respondent Shri Bhatia held an election meeting at village Baldhar on May 17, 1982 and in that meeting he addressed and read the paper in which there was "20-Sutriya Programme". He has asserted that the paper, which was read by Shri Bhatia in that election meeting, was like Ex.P.1. He has further stated that such like poster was also given to him by Shri Bhatia. In his cross-examination, the witness has stated that Shri Bhatia had told him that those poster depicted the work done by the petitioner. He has denied that he was a polling agent of the petitioner. He has further denied that he was a Congress man. He has stated that no worker of Janata Party had visited his area. According to him, some of the contents of the poster like Ex. P.1 were that (i) the children of 'girth' and Harijans had no brain, (ii) the petitioner has got his son admitted to Medical College and (iii) no person from within the Nagrota constituency was employed in Dharladhar Project though 1,700 guards had been employed there. P.W.17 is Shri Madho Ram. He has specifically denied the suggestion that he was depositing falselv and had not attended the meeting when the posters were distributed by the respondent. P.W.19 Shri Nek Ram has, *inter alia*, stated that he did not know the respondent earlier but had known him from the time of the last election meeting held in his village on May 12, 1982 near a temple of 'Radha Krishan'. According to him, there were 40/50 persons in that meeting and posters like Ex.P.1 were distributed by the respondent. According to him, the respondent addressed the meeting and said that these posters depicted the deeds of the petitioner and that they should cast votes in favour of a candidate having the symbol of flower. In his cross-examination, the witness has stated that the poster was in the name of Janata Party but Shri Bhatia told them that they were one, and should vote for a candidate having the symbol of flower. He has denied the suggestion that he had given trucks for canvassing in favour of a Congress candidate. The witness has volunteered that he had seen Shri Kanshi Ram of Janata Party in the Office of B.J.P. at Nagrota and that he saw him there three/four times when he visited Nagrota. He has further stated that he had told the petitioner about the distribution of posters like Ex.P.1 on May 14, 1982. P.W. 20, Shri Gian Chand has, *inter alia*, stated that he is a Panch of Gram Panchayat Mallan and knows the respondent. He has stated that last year, during the Assembly Elections, the respondent came to his village on May 12, 1982 and held an election meeting there. According to him, there were 40/50 persons in the meeting and Shri Bhatia had posters with him and in that meeting he said that in these posters there is "20-Point Programme" of the petitioner. He has asserted that the respondent had also distributed the posters like Ex. P.1. In his cross-examination, he has asserted that the respondent did not distribute the posters like Ex.P.1. but he also read them. He has further deposed that he knew Chaudhary Kanshi Ram, who was also a candidate, but he did not make any canvassing and was telling that it was one and the same thing. He has also stated that by 'one and the same thing' he meant that according to Kanshi Ram he and Shri Bhatia were one. He has also deposed that Shri Kanshi Ram used to be with Shri Bhatia but on May 12, 1982, Shri Kanshi Ram was not with the respondent. P.W. 21 Shri Prem Chand has stated that he is the Pradhan of Gram Panchayat Hatwas and knows Shri Bhatia. He has deposed that during the last Assembly Elections, Shri Bhatia came to his village in May, 1982 and accompanied by other persons, he was distributing posters like Ex.P.1 containing "20-Point Programme". He has asserted that Shri Bhatia was asking the people to read the posters like Ex.P.1 which depicted the deeds of the petitioner. He has also deposed that Shri Bhatia was further saying that they should vote for a candidate having the symbol of flower. According to the witness, Shri Bhatia, one Shri Ganga Ram and the workers of the B.J.P. were distributing the posters. In his cross-examination, he has denied the suggestion that he was active member of the Congress. He has, however, admitted that he was a supporter of the Congress Party and acted as a counting agent of the petitioner in the election. He has denied that he ever accompanied the petitioner for canvassing. He has also denied the suggestion that the posters like P. 1 were distributed by the Janata Party Workers. On the contrary, he has asserted that such like posters were distributed by Shri Bhatia and his workers during the election. P.W. 22 Shri Satish Sarotri has stated that he is the sole proprietor of National Bus Service Company, Nagrota Bagwan. He has stated that he is the Vice-President of the District Youth Congress-I and known the respondent. He has deposed that on 2nd or 3rd March, 1982, S/Shri Kedar Nath Bassi, Varinder Advocate and Ram Chand

Bhatia met him near his office and that he enquired of them as to where they were going. They told him that they were going to the Printing Press and would depict that "Ham is dafah election main naya gul khilane ja rahe hain". According to the witness, they went to the Printing Press known as 'Modern Printing Press'. He has further stated that the proprietor of the Printing Press is Shri Some Prakash Sarotri. He has deposed that in 'Lidwar' fair he met the respondent and Shri K. N. Bassi who gave him a poster like P.1 and told him that "Ham is dafah election main naya gul khilane ja rahe hain" which was depicted in that poster. In his cross-examination, the witness has denied the suggestion that he had been given the route permits due to his being a Congress-man. According to him, there are 4/5 other individual sole proprietors to whom such permits had been given. He has asserted that he had not worked for the petitioner during the last election. According to him, the number of posters like Ex.P.1 that were distributed in 'Lidwar' fair may be about 90/100. He has also deposed that even after 'Lidwar' fair, he had seen a large number of posters being distributed in the constituency. He has denied the suggestion that he was depositing falsely due to his being a Vice-President of the District Youth Congress-I, Kangra. P.W. 23 Shri Naresh Kumar has stated that he knows the respondent who contested the election. According to him, when he used to visit Nagrota from about the end of February and beginning of March, 1982, 4/5 persons, that is, S/Shri Kalidass, Kanshi Ram and Varinder Advocate used to go together and they used to tell the people whomsoever they met that after 10 or 15 days, they shall disclose the deeds of the petitioner. He has further stated that thereafter in 'Lidwar' fair which was held from March 25 to March 27, 1982, he saw the respondent and Chaudhary Kanshi Ram distributing the posters like P.1. He has further deposed that he saw Chaudhary Kanshi Ram sitting in the office of the respondent Shri Bhatia. He has also asserted that the respondent, Chaudhary Kanshi Ram and his workers used to tell the people that the petitioner had constructed a 'kothi' costing about rupees two lacs and explained almost all the contents of Ex. P.1. In his cross-examination, the witness has deposed that the posters like P.1 were distributed by the respondent, and that Chaudhary Kanshi Ram used to help him in the matter. He has deposed that Chaudhary Kanshi Ram used to sit by the side of Shri Bhatia. According to the witness, on distribution of the posters, there was a good deal of commotion among the people. He has asserted that no doubt these posters appeared to have been issued by the Janata Party but in fact this was done by the joint conspiracy of the aforesaid persons. He has denied the suggestion that the posters were distributed by Chaudhary Kanshi Ram and his workers and that the respondent had no concern with them. P.W. 24 is Shri Roshan Lal. He has stated that he is the Chairman of Block Samiti, Nagrota. According to him, the candidates had started canvassing in 'Lidwar' fair at Nagrota during the Assembly Elections. According to him, some children brought a poster to him and he went through the same in which the misdeeds of the petitioner were depicted. He has deposed that he met the petitioner sometime later on that day and handed over the poster like P.1 to him. He has further deposed that in the month of May, 1982, before polling he saw Shri Kanshi Ram, Bishambhar Dass, K.N. Bassi, Suresh of Nagrota and the respondent sitting in a meeting in the office of the respondent. He has also deposed that he asked Shri Kanshi Ram as to why he was in the office of Shri Bhatia when he was contesting election and that he said that their object was one and that was to defeat the petitioner. According to him, Suresh and Arvind Sharma who were working for B.J.P. were distributing the posters like Ex.P.1. In his cross-examination, the witness has stated that he is the Pradhan of Nagrota Mandal Congress Committee. According to the witness, he did not know the number of posters but the posters like Ex. P.1 were in heaps in the office of the respondent. He has asserted that whenever he happened to meet Shri Kanshi Ram, he was found near the office of Shri Bhatia. He has further deposed that he did not see any office of Shri Kanshi Ram in Nagrota. P.W. 25 Shri Roshan Khanna, *inter alia* has stated that he knew the respondent and during the last election his office was near his own office. According to him, Shri Kanshi Ram was a candidate of Janata Party. He has stated that he had seen post like P.1 and such posters were distributed from the office of B.J.P. According to the witness, Chaudhary Kanshi Ram whenever happened to visit Nagrota, he used to sit in the office of B.J.P. He has stated that Shri Varinder Advocate used to tell people that the misdeeds of Shri Hardyal were depicted in the said posters and that the main campaign of

B.J.P. lies on such like posters. In his cross-examination, the witness has admitted that he is a Congress-worker. He has denied the suggestion that he had deposed in favour of the petitioner since he was a Congress worker. P.W. 26 Shri Harbhajan Singh has stated that during the last Assembly Elections, Shri Shanta Kumar addressed a public meeting at Nagrota on May 17, 1982 and that he was also present in that meeting. According to him, the meeting was addressed by B.J.P. leaders and such leaders were S/Shri Suresh Kumar, Gurdeep Singh, Joginder and Shanta Kumar. He has stated that in Ex.P.9, Shri Gurdeep is standing between Shri Kanshi Ram and Shri Bhatia. He has also identified Shri Shanta Kumar in photograph Ex. P.6. He has further stated that the speeches made by Shri Suresh Kumar and three others were tape-recorded by him and that he had brought the cassette in which these speeches were recorded. He has asserted that he could identify the voices of all the four persons in the cassette. (The witness identified the voices of the speakers). In his cross-examination, the witness has stated that he had not undergone any training in tape-recording. He has admitted that he was the counting agent of the petitioner and had also worked as his polling agent. He has asserted that Shri Kanshi Ram was also a contesting candidate but he did not canvass. He has deposed that he did not know if Shri Kanshi Ram was a candidate of Janata Party but he was canvassing for casting votes in favour of a candidate having the symbol of flower.

The respondent has examined as many as 17 witnesses. R.W. 1 is Shri Prithi Singh, Election Tehsildar, who brought the summoned record. *Inter alia*, it is stated by him that there were 9 validly nominated candidates and out of them five had withdrawn their nomination and that Shri Varinder was one of them. The witness after examining the record, has stated that there were four contesting candidates. The witness had also brought the forms of appointment of polling agents of Shri Kanshi Ram, who was one of the contesting candidates. The witness describes the names of the polling and counting agents of Shri Kanshi Ram. In fact, the witness has given certain details from the record. Ultimately, the witness stated that in the nomination paper filed by Shri Varinder Kumar he had made a declaration that he had been set up as a candidate of B.J.P. R.W. 2 is the respondent himself. *Inter alia*, it is stated by him that he was a contesting candidate and besides him there were three other contesting candidates. According to him, he contested as a B.J.P. candidate. He has deposed that besides him, four other persons had applied for B.J.P. ticket from the constituency but he got the ticket. He has stated that he started election campaign from April 22, 1982. He has further deposed that he had seen the poster like Ex. P.1 and that he had taken no part in the printing and distribution of such like posters. He has also deposed that he had not asked anyone of his supporters to distribute such like posters. According to him, he had seen the posters like Ex. P. 1 in 'Lidwar' fair held between 26th March and 28th March, 1982. He has stated that Shri Kanshi Ram continued his election campaign till the last date. According to the respondent, the population of literate persons within the constituency is very small. He has stated that he mainly canvassed to cast vote for his symbol and that the election symbol of his party was a lotus flower. He has admitted that he organised a public meeting at Nagrota on May 17, 1982 and that the meeting was addressed by Shri Shanta Kumar whom he was accompanying. According to him, Shri Shanta Kumar addressed the meeting hardly for about 2/3 minutes. The respondent has deposed that the approximate number of votes in his constituency was about 31000 and out of them about 25000 voters had cast their votes. According to him, he secured 12612 votes whereas the petitioner got 9,254 votes. He has denied that Shri Kanshi Ram ever came to his office and sat there. In his cross-examination, he has stated that he did not know that Shri Varinder Kumar had filed his nomination papers as a B.J.P. candidate. He has, however, admitted that Shri Varinder Kumar was trying to secure B.J.P. ticket. He has stated that he knew Shri Kedar Nath Bassi, who is the President of the B.J.P. Nagrota Town and was in charge of his election campaign. According to him, Shri Kali Dass Pradhan was not his supporter. He has denied that Shri Parma Nand, brother of Shri Kanshi Ram was known to him. He has asserted that he had seen him for the first time in this Court when he appeared as a witness. He has deposed that he has read the posters like Ex.P.1 but asserted that he could not

say whether the allegations made in such posters were right or wrong. He has denied the suggestion that he along with S/Shri Varinder Kumar, Kali Dass, Kanshi Ram and K.N. Bassi had got the posters like P.1 printed at Modern Press, Nagrota. He has also denied that they got such like posters distributed for the first time during the end of March, 1982. He stated that he could not say whether the petitioner has got a good reputation in his constituency. He has denied the suggestion that he had made an appeal to the voters to cast votes on the basis of caste and community. He has also denied that he held any election meeting at Badoh on 7.5.1982 and that he or his workers distributed the posters like P.1 there. He has denied the holding of any election meeting on May 14, 1982 at Kandi Dhallaru and also the distribution of posters like P.1. He has also denied the holding of election meeting at Village Bhaniyarkar and distribution of posters in that meeting. He has admitted the holding of election meeting by Shri Shanta Kumar at Dhallun on May 17, 1982. He has also admitted his participation in that meeting. The respondent, however, denied that posters like P.1 were distributed by him or his workers in that meeting. The respondent stated that he could not tell the time when this meeting was held at Dhallun. According to the respondent, prior to the meeting held at Dhallun on May 17, 1982, on the same day a meeting was held at village Rajayana. It is asserted by him that the meeting was addressed by Shri Shanta Kumar alone and not by him. According to the respondent, the workers of the Congress-I Party used to call the posters like P.1 as "20-Point Programme." He has denied the suggestion that Shri Shanta Kumar had referred to the said poster as "20-Satriya Programme." He has also denied the distribution of posters like P.1 in that meeting. The respondent denied the holding of meeting on May 16, 1982. He also denied the suggestion that he had distributed posters like P.1 and some of them to Shri Prem Chand. He has denied that Shri Arvind Sharma a worker of B.J.P. had distributed posters like P.1 along with Shri K.N. Bassi. The respondent has admitted that he knew Gurdeep Singh of Nagrota. According to him, in photograph Ex. P.5 and P.9 Shri Gurdeep Singh is standing in between him and Shri Kanshi Ram. The respondent also identified Shri Arvind Sharma in Ex. P.5 photograph. According to the respondent, the photograph Ex. P.4 to Ex. P.9 were taken on May 21, 1982 when the victory procession was taken out at Nagrota by him and his workers. The respondent admitted his visit to village Mallan but showed his ignorance about the date of his visit. He admitted holding of an election meeting there but denied the distribution of posters like P.1. The respondent also denied that he distributed the posters even prior to that. The respondent has also admitted his visit to village Sunhi but could not tell the date. He could not admit or deny whether he visited that village on May 15, 1982. He also denied the distribution of posters like P.1. He could not say how many meetings were addressed by Shri Shanta Kumar along with him on May 17, 1982 in the constituency. He has deposed that in the election meeting held at Nagrota on May 17, 1982, no one had addressed the meeting except for Shri Shanta Kumar. He has also denied the suggestion that Shri Gurdeep Singh was the stage Secretary of that meeting but asserted that he did not know who acted as a stage Secretary. According to the respondent, there may be hardly 25/30 percent literate persons in his constituency. The respondent could not say if there were maximum schools in Nagrota Constituency as compared to other constituencies within District Kangra. The respondent also could not say whether there were 12 High/Higher Secondary Schools, 20 Middle Schools and 50 Primary Schools within Nagrota Constituency. The respondent denied the suggestion that he, Varinder Kumar, K. N. Bassi, Kali Dass and Ganga Ram had gone to the house of Parma Nand PW telling him that they were getting a poster like Ex. P.1 printed in his name. The respondent has also denied the suggestion that the bundles of posters like P.1 were lying in his office and that such like posters were distributed by him or his workers in the constituency. The respondent also denied that he had sent his workers in the buses of Suresh Sarotri for distribution of posters like P.1. The respondent also denied the suggestion that they had got the posters like P.1 printed or that before ordering the printing, they had met Shri Suresh Sarotri and had told him that in this election "Ham is dafah election main naya gul khilane ja rahe hain." The respondent also denied the suggestion that he and Shri Kanshi Ram, Varinder Kumar, K.N. Bassi, Kali Dass and Ganga Ram had conspired to get the posters like P.1 printed and distributed. The respondent also denied that their only plan was to defeat the petitioner in that way. R.W. Shri Ved Prakash has stated that Shri Kanshi Ram, Janata Party candidate, had visited his village and distributed some posters

like P.1. According to the witness, Shri Kanshi Ram had canvassed for himself. In his cross-examination, the witness stated that Shri Shanta Kumar had visited their village on May 17, 1982. The witness showed his ignorance whether Shri Shanta Kumar while he visited our village had the poster like P.1 with him, but stated that he had posters which carried the symbol of lotus flower. According to the witness, Shri Shanta Kumar had not distributed the posters like P.1 in his village. R.W. 4 Shri Jaishi Ram has stated, *inter alia*, that Shri Vidhi Chand, Kanshi Ram, the petitioner and the respondent had visited his village and Shri Kanshi Ram had distributed the posters like P.1. According to the witness, the respondent had no posters with him but asked them to vote for his election symbol of lotus flower. According to the witness, no other B.J.P. workers had come to his village except for the respondent. In his cross-examination, the witness admitted that he was the polling agent of the respondent. The witness stated that he could not say whether the contents of the poster like P.1 were right or wrong. He has asserted that the respondent visited his village twice. At the end of the cross-examination, the witness admitted that Shri Bhatia had been distributing posters like P.1. R.W. 5 Shri Madan Lal has stated that posters like P.1 were distributed by Shri Kanshi Ram during the election. He has stated that the respondent visited their village and distributed posters carrying the symbol of lotus flower. He has further stated that he read the posters like P.1. In his cross-examination, the witness admitted that he knew the petitioner for the last 10/12 years. He has further stated that he could not say whether the allegations contained in the poster like P.1 were correct or wrong. He admitted that he had enrolled himself as a member of B.J.P. He has also stated that in the election campaign for Shri Bhatia, he had visited village Dhallun, Tangroti and other villages within the constituency. He has asserted that whichever village he visited during the election campaign, he saw posters like P.1 pasted on walls. The witness denied the suggestion that Shri Shanta Kumar and Shri Bhatia had distributed the posters like P.1. The witness also admitted that he was the polling agent of the respondent. R.W. 6 Shri Gian Chand has stated that Shri Kanshi Ram had got posters like P.1 printed regarding the "20-Sutriya Programme" which were distributed by him and 2/3 other persons in 'Lidwar' fair. In his cross-examination, the witness stated that he did not belong to any political party and that he worked for Shri Bhatia in the election. He has stated that he visited 5/6 villages in connection with the election and that he had seen posters like P.1 in all the villages that he visited. He has stated that he knew what was written in the poster like P.1 but he had not told anyone while working for the respondent that in the said poster the misdeed of the candidate had been reflected. R.W. 7 Shri Prem Singh has stated that he was working for Shri Kanshi Ram a Janata Party candidate in the election and was his polling agent. He has stated that Shri Kanshi Ram visited villages and distributed posters carrying the symbol of 'Haldhar.' The witness, however, stated that he had not seen the respondent distributing such like posters. In his cross-examination, the witness stated that at the office of Shri Kanshi Ram there were about 200/300 posters like P.1. According to the witness, he had read the posters in which "20-Sutriya Programme" was depicted. He admitted that he was told by Shri Kanshi Ram that the posters like P.1 were got printed by him. According to the witness, he had not seen the respondent at all during the election. He has asserted that in Tikkas which he visited he did not see any poster like P.1. He has also stated that he gave posters like P.1 for distribution to S/Shri Moti Ram of Tikka Dheru, Des Raj of Tikka Ghant and Sher Singh of Tikka Ruppa and that he had given about 3/4 posters to each one of them. He admitted that he became a member of Janata Party during the election in 1982. The witness has stated that he did not know if anything had been written about the petitioner in posters like P.1. R.W.8 Shri Dhani Ram has stated that Shri Bhatia had distributed his posters which carried the symbol of lotus. He has further stated that Shri Shanta Kumar visited his village during the election campaign on May 17, 1982 and addressed the election meeting. In his cross-examination, he has stated that he had not read the posters like P.1 till to-day and did not know the contents thereof. He has stated that Shri Bhatia used to visit his village almost after every second day. He has admitted that Shri Bhatia was present in the meeting held in his village. He has denied the suggestion that the posters like P.1 were distributed by Shri Bhatia or his workers in that meeting. R.W.9 Shri Man Singh stated that he had attended the 'Lidwar' fair which was inaugurated by the petitioner. He has deposed that in that fair, Shri Kanshi Ram distributed the posters like P.1. According to the witness, Shri Kanshi Ram used to

distribute the posters which carried the symbol of 'Haldhar' and Shri Bhatia used to distribute the posters carrying the symbol of lotus. He has deposed that Shri Parma Nand, brother of Shri Kanshi Ram, used to accompany him during the election campaign. The witness stated that he had read the posters like P.1 which were against the petitioner. The witness further stated that he did not know whether the allegations made in the posters like P.1 against the petitioner were true or otherwise and that only the members of political parties may be knowing about it. In his cross-examination, the witness stated that Shri Bhatia had been visiting their village during election but he did not know if he had visited the village on May 12, 1982. According to the witness, Shri Bhatia was canvassing from house to house. The witness denied the suggestion that Shri Bhatia had told him that the petitioner was telling that 'ghirths' had no brains and they should not be accommodated in service. The witness also stated that Shri Bhatia had not read any "20-Sutriya Programme." R.W. 10 Shri Jeet Singh has stated that the workers of the respondent were distributing the posters carrying the symbol of lotus and the respondent had not distributed any poster which carried the symbol of 'Haldhar'. He has deposed that posters like P.1 were distributed by Shri Kanshi Ram. In his cross-examination, the witness stated that Shri Bhatia had visited his village but he could not tell the date of his visit. He has further stated that he did not go with Shri Bhatia to hold an election meeting near the village shop. He has asserted that except for Shri Kanshi Ram, other candidates did not say anything about the posters like P.1. R.W.11 Shri Romesh Chand has stated that in the election, he was working for Janata Party candidate Shri Kanshi Ram and was also his polling agent. He has also stated that in the election office, there was an old man who was said to be the elder brother of Shri Kanshi Ram known as Parma Nand. According to him, the posters like P.1 were distributed by Shri Kanshi Ram and were also given to him for distribution. In his cross-examination, he has stated that he got himself enrolled as a member of Janata Party in the year 1977. According to the witness, during the election, Shri Kanshi Ram was using his own jeep and besides the jeep, there were trucks hired by him for election purpose. He has deposed that he had kept 50/60 workers for the election purpose. He has further deposed that posters like P.1 were got printed by him and the publicity in the election was made on the basis of the contents of the posters. He has stated that he knew Hindi and he had read the said posters and that the poster is styled as "20-Sutriya Programme." He has admitted that the distribution of the posters like P.1 was started by about the end of March, 1982 in the constituency and that they used to read the said posters and used to tell the people about the contents thereof. He has deposed that he did not know whether the allegations contained in the posters were correct or not and that this may be known either to the petitioner or by Shri Kanshi Ram. He has also asserted that in case the petitioner had initiated legal proceedings for making the allegations as contained in Ex.P.1 the entire atmosphere against him should have changed. According to the witness, they were making canvassing on the basis of the allegations contained in the posters like P.1. According to the witness, Shri Bhatia did not distribute the posters like P.1 and did not make publicity of the allegations as contained in the said poster. The witness denied the suggestion that he was a member of B.J.P. and not a member of Janata Party. R.W. 12 is Shri Lal Singh. The substance of his statement is that the contesting candidates were distributing posters of their respective election symbols. R.W.13 Shri Janak Singh is Up-Pradhan of Gram Panchayat Dhanoya. The substance of his statement is that the contesting candidates had visited his village and they were distributing posters of their election symbols. In his cross-examination, he has stated that he had seen posters like P.1 which were pasted on the walls but he had not read the contents thereof. According to him, the respondent had visited his village even prior to May 17, 1982. He denied the suggestion that the respondent had distributed posters like P.1. He also denied that the respondent had told people in the constituency that the petitioner had been saying that the persons belonging to 'ghirth' community did not have common sense and intelligence and that he did not depend upon their vote as there was a 'Rajyog' on his forehead and he did not care for their votes. It is also denied by him that the respondent had said that the petitioner had not secured employment for the unemployed persons within the constituency and that no employment was also secured specially in the Indo-German Project and the Forest Department. He also denied that the respondent had told people that Sub-Tehsil of Baroh was to be opened much earlier but Shri Hardyal did not pursue the matter. He emphatically denied that a meeting of the B.J.P. was held near the shops at Baroh on May

7, 1982. He also denied that in that meeting posters like P. 1 were distributed by the respondent and that the contents of the said posters were read out and explained to the people present there. R.W. 14 is Shri Subhash Sood. The substance of his statement is that Shri Kanshi Ram had been distributing posters of different types in the constituency and on those posters the symbol was of Janata Party. According to the witness, his main supporters were his brother Shri Parma Nand and two/three other persons. He has also stated that on May 17, 1982 an election meeting was organised by the Janata Party and Dr. Sarojini Maheshi had attended and addressed that meeting. In his cross-examination, the witness has admitted that the said meeting was to be addressed by Shri Shanta Kumar and this fact was announced even earlier. The witness stated that he did not know whether the allegations made in posters like P.1 were correct or otherwise and that this must be known to Shri Kanshi Ram who had got such like posters printed and distributed. He has admitted that he was a member of the B.J.P. since its formation and that he was one of the counting agents of the respondent. According to the witness, the posters like P.1 were not used by other contesting candidates except Kanshi Ram. R.W. 15 is Shri Kishori Lal, who is running a shop at Nagrota. The substance of his statement is that Shri Kanshi Ram was distributing the posters like P.1 in 'Lidwar' fair held at Nagrota, during the last week of March, 1982. He has further stated that Shri Kanshi Ram was saying that he had got the Janata Party ticket in the election. In his cross-examination, the witness has stated that he could not say who had inaugurated that fair (Lidwar). He has stated that a stage was put up by Shri Kanshi Ram on the road side. According to the witness, he had seen posters like P.1 but had not read them. He denied the suggestion that Shri Gurdeep Singh was the stage Secretary in that meeting which was held at Nagrota by the B.J.P. and was addressed by Shri Shanta Kumar. He also denied that the posters like P.1 and its contents were distributed and used by the B.J.P. candidate and C.P.I. candidate as well. He also denied that Shri K. N. Bassi had distributed the posters like P.1 in almost all the shops at Nagrota. He has finally stated that he was not a worker of the B.J.P. in the last Assembly Elections. R.W. 16 is Shri Suresh Mehra, who is running a shop at Nagrota. According to him, Lidwar fair is held during the end of March. He has stated that in that fair last year, election propaganda was done by Shri Kanshi Ram Chaudhary who was telling the people that he was a Janata Party candidate and that the votes be cast in his favour. It is further stated by him that he (Kanshi Ram) was also distributing posters like P.1 which had papers of different colours. According to the witness, Shri Kanshi Ram contested the election till its end. He has also deposed that the respondent was distributing posters carrying the symbol of lotus. In his cross-examination, the witness has stated that he had not read the contents of the posters like P.1 till to-day. He has stated that he had not heard the respondent saying that the petitioner says that the persons belonging 'ghirth' community did not possess intelligence or commonsense and that he did not depend upon their votes, as there was a 'Rajyog' on his forehead. He has also stated that the respondent had not made any propaganda that the petitioner had not secured employment for the unemployed persons of the constituency either in the P.W.D., Indo-German Project of Forest Department. He has admitted that election meeting was organised by the B.J.P. on May 17, 1982 at Nagrota and that the said meeting was addressed by Shri Shanta Kumar for about 5/6 minutes in the evening and no other person had addressed that meeting. It is deposed by the witness that at the time when Shri Shanta Kumar had reached, about 2000/2500 people had gathered there in the meeting. The witness has denied that Shri K. N. Bassi had distributed the posters like P.1 at Nagrota but expressed his ignorance if the posters like P.1 were distributed in that meeting. He has denied that Shri Bhatia had distributed the posters like P.1. R.W. 17 is Shri Kedar Nath Bassi. He has stated that he is taking part in the politics since the year 1952 and joined Jan Sangh Party at that time. According to him, he joined Congress Party during the year 1958 and during the year 1979. He gave up Congress Party and joined the Janata Party and after there was split in the Janata Party, he joined the Bharatiya Janata Party. According to him, Lidwar fair is held at Nagrota from March 25 to March 27 every year. It is deposed by him that during the year 1982, the said fair was inaugurated by the petitioner. He has deposed that at that time when the fair was held the election fever had started. He has further deposed that on the first day of the fair, Shri Kanshi Ram and his brother Shri Parma Nand and some others

had gathered on a platform under a mango tree and Shri Kanshi Ram had told the people that he hoped to get Janata Party ticket and that he started distributing posters like Ex.P.1. He has admitted that he was incharge of election from Nagrota constituency for the B.J.P. and that he had no knowledge about the printing and distribution of the posters like P.1. He has deposed that the party had organised an election meeting at Nagrota on May 17, 1982 and that the said meeting was to be addressed by Shri Shanta Kumar. According to him, Shri Shanta Kumar had addressed that meeting for about 2/3 minutes only. He has also stated that Shri Gurdeep Singh of Nagrota was working for the Congress-I candidate and that he never gave any speech from the stage of B.J.P. In his cross-examination, the witness stated that S/Shri Ram Chand Bhatia, Pratap Chand and Varinder Chaudhary and two others whose names he did not remember had applied for B.J.P. ticket. In answer to a question he denied that he alongwith S/Shri Kali Dass, Pradhan, Ram Chand Bhatia and Kanshi Ram, a Janata Party candidate had joined hands together to defeat the petitioners in the election. He also denied that in pursuance of their conspiracy, posters like P.1 were got printed. He further denied that his party or Shri Bhatia had been distributing the posters like P.1 to the people throughout the constituency. According to the witness, Lidwar fair continued from 26th March to 28th March, 1982. The witness has admitted that on or about 18/19th March, 1982, Shri Kanshi Ram came to his shop and told him that he was likely to get a Janata Party ticket to contest the election. The witness has also asserted that there was no covering candidate of B.J.P. but Shri Varinder Advocate had filed his nomination papers as a member of B.J.P. The witness has denied that during the election campaign for B.J.P. candidate, he had been utilising the allegations as contained in the posters like P.1 and telling the people that these were the deeds of Congress-I Party and that being so he should not be voted for. The witness also denied the distribution of posters like P.1. He denied that Shri Kanshi Ram was used as a tool by the respondent and his party to defeat the petitioner. According to the witness the meeting which was organised by his party on May 17, 1982, was to be addressed by Shri Shanta Kumar and none else. He has admitted that after the election result was declared and victory procession was taken out, he was in the procession. He has further admitted that in that procession Shri Kanshi Ram who was garlanded had also come to congratulate and was also proceeding with the procession. According to the witness, he did not remember if Shri Gurdeep Singh of Nagrota was also going in the victory procession alongwith the respondent. The witness also denied that Shri Kanshi Ram was going with the victory procession in pursuance of the B.J.P. Programme of do or die, in the election. He read the poster like P.1 in the Court and stated that in his opinion the allegations made in the posters like P.1 are not correct. He has also denied that before the arrival of Shanta Kumar at Nagrota on May 17, 1985, the election meeting organised by the B.J.P. was addressed by Shri Suresh Kumar, Joginder Singh and Shri Gurdeep Singh.

The relevant statements of the witnesses examined by the parties have been narrated above.

As pointed out earlier above, issue No. 1 after being treated as a preliminary issue has been disposed of. Issues No. 2, 3, 5 and 6 are inter-connected. They can be conveniently discussed and disposed of together. I shall first of all deal with issue No. 6, whether the contents of Annexure-PA pertain to the personal character and conduct of the petitioner and were even false to the knowledge of the respondent and he did not believe the same to be true and what was its effect?

The literal English translation of the poster marked 'PA' which is exhibited as Ex.P.1 has been already reproduced above. It is contended by Mr. O.P. Sharma, learned counsel for the petitioner, that the allegations made in the posters like 'PA' and exhibited as P.1 (hereinafter to be referred to as Ex.P.1) amount to the assassination of the personal character and conduct of the petitioner. He has referred to Section 123 (4) of the Act. It is expedient to reproduce the said Provisions:

"123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1)

- (4) The publication by a candidate or his agent or by any other person; (with the consent of a candidate or his election agent), of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidate, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's selection."

The learned counsel for the petitioner has made reference to certain items of the poster in question. In respect of item No. 1, it is pointed out by the learned counsel that the allegations are such which point out that the petitioner does not care for the voters and that he can win the election due to his good luck. Item No. 2 of the poster contains allegations that the petitioner says that the children of Harijan and 'Ghirth' community do not have brains and on that account he would not employ them in his office, and on the contrary the person opposing him in the election would establish that even the children of Harijans and 'Ghirths' have brains and if given opportunity they can work like other children. The substance of item No. 3 of the poster is that while the petitioner was a Forest Minister, 1,700 boys were employed in a Project and 300 as Forest Guards. Other boys were also employed in different departments but the petitioner be asked whether the employment was given to anyone from his constituency, meaning thereby that none was employed. In Item No. 4, the allegations are such that the petitioner was responsible for the discontinuance of certain income that was being derived by village Panchayats. Item No. 5 accuses the petitioner that inspite of his being an M.L.A., for 15 years as also Minister, he has been negligent in appointing Gazetted Officers from Nagrota Constituency. Similarly, in Item No. 6, the allegations are that in case he had employed five boys per Panchayat every year during his 15 years' tenure as M.L.A., and Minister, 2,000 of them would have got the employment from the constituency and no one could be left un-employed. In item No. 7, allegations are against the petitioner that he is misleading the innocent villagers that it was due to him that roads, dispensaries, bridges and schools have been provided though it is the function of anyone who is in power, meaning thereby that the benefits so given to the people in the constituency were not due to him. Allegations in Item No. 8 are attributed to the petitioner. He has been branded as an outsider and befooling people for 15 years that he had a 'Rajyog' and further that he has been living outside the constituency in a palatial house and grinding his own axe as an M.L.A. In item No. 9, the allegations are made against the petitioner that inspite of his being a 'Ghirth' M.L.A., he does not stay with them or the persons of any other community, but for the last 15 years he had been seen staying with an aristocrat, named, Seth Saran Dass, who is just like him and, goes to him in a car with a green flag. In item No. 10, the allegations are that the petitioner does not understand the difficulties of farmers and labourers. On the contrary, it is claimed that the opposing candidate will remove the difficulties of farmers and labourers. In item No. 11, the petitioner has been branded as a deceiver and that the person associated with the poster shall fulfil his promise and would not make false promises if the work could not be done. Similarly, Item No. 12, accuses the petitioner that he stays at the house of a rich person and that the person associated with the poster would go to the house of poor person and would minimise his suffering meaning thereby that the petitioner has no regards and sympathy with the poor. In item No. 13 the petitioner has been accused of not making any arrangement for medical treatment of a poor person and that the petitioner only visits a poor man after he is dead, instead of making any arrangement for his treatment. On the contrary, the person associated with the poster claims that he will give all possible help to a poor person for his treatment and would also provide money to him for his treatment. Under this item, the petitioner has been pointedly accused that he visited the house of late Bararu Ram who was a poor person from Mauja Sarialakkar who died without medical aid and that the petitioner only participated in taking meals after his death to be fool the people. In item No. 14 the petitioner is accused that he visits the people only on the occasion of marriage etc. that the person

associated with the poster if elected as M.L.A. will not visit on such occasions as it burdens a person with expenses when he would be accompanied by 40/50 persons and that he will visit if invited before marriage and will help such a person in giving him financial help. In Item No. 15, the petitioner has been accused that he deceived a very poor old man. It is elaborated that five years back, an old man gave application to the petitioner for getting some employment to his son, who had passed Matriculation Examination and the petitioner failed to provide job to him. The boy is stated to have died and at the time of seeking votes the petitioner told the father of the boy that he would arrange for his appointment and the order of appointment would be immediately sent. In Item No. 16, the petitioner has again been accused that he had failed in providing employment to the boys from his constituency but on the contrary persons from other constituency were deliberately got employed by him to oblige Pt. [Sant Ram and Shri Sat Mahajan. In Item No. 17, the petitioner has been accused of not establishing a sub-tehsil at Badoh though during Janata regime sub-tehsils had been established at other places. Motive has been attributed to the petitioner that the establishment of Sub-Tehsil at Badoh was withheld so that the same be inaugurated near about the holding of elections and he may mislead the innocent villagers that he had established the sub-tehsil. In item No. 18, the petitioner has been accused of not opening a Recruitment Office of Air Force and Navy at Nagrota though on 18th January, 1981, the 'Ghirth Mahasabha' had made a demand from the Centre to open such an office. The petitioner has been further accused that he had refused to support such a demand. In Item No. 19, the petitioner has been blamed that he refused to support the demands pertaining to backward classes though he got admission for his son in the Medical College against the seat of backward classes. In item No. 20, it is alleged against the petitioner that 15 years back, the petitioner was the President of Jan Sangh group of Tea Garden Trade Union and thereafter joined Congress and shifted his loyalty. He has further been accused that he only helps the children of rich people from outside and does not help the village people. He is also accused of misleading the innocent tenants that he was responsible for providing them with land though it is false.

I may also refer to the pleadings of the parties relevant to issue No. 6, whether the contents of the poster pertain to the personal character and conduct of the petitioner, etc.

The relevant paragraphs pertaining to issue No. 6 are 3, 5 and 19 of the election petition. In para-5, it is asserted by the petitioner that the contents of the poster Ex.P.1 and facts contained therein are false to the knowledge of the respondent and the respondent did not believe the same to be true. According to the petitioner, the contents of the poster are in relation to the personal character and conduct of the petitioner. In reply to the said para, it has been stated by the respondent that the contents of the poster in no way tarnish the personal character of the petitioner but relate only to the conduct of the petitioner as an M.L.A., and Minister. It is pointed out by Mr. Sharma that the reply of the respondent is evasive and vague and that the respondent has tried to justify the allegations made against the petitioner. The learned counsel for the petitioner has referred to certain decisions relevant to this aspect of the matter. He has referred to a decision of the Supreme Court in *Inder Lal vs. Lal Singh and others* (AIR 1962 SC 1156). He has specifically drawn my attention to paragraphs 11, 12 and 13 of the said judgment. It is convenient to extract the same for a ready reference:

- "11. It would be noticed that in prescribing the requirement that the false statement should have relation to the personal character of the candidate, a distinction is intended to be drawn between the personal character of the candidate and his public or political character. The provision postulates that if a false statement is made in regard to the public or political character of the candidate, it would not constitute a corrupt practice even if it is likely to prejudice the prospects of that candidate's election. This assumption is presumably based on the theory that the electorate being politically educated and mature, would not be deceived by a false criticism against the public or political character of any candidate. The public and political character of a candidate

is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the electorate would be able to judge the allegations on the merits and may not be misled by any false allegations in that behalf. It is on this theory that false statements of fact affecting the public or political character of a candidate are not brought within the mischief of S.123(4). In order that the elections should be free, it is necessary that the electorate should be educated on political issues in a fearless manner and so, the Legislature thought that full and ample scope should be left for free and fearless criticism by candidates against the public and political character of their opponents.

12. But the position with regard to the private or personal character of the candidate is very different. Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. That is why it is for the protection of the constituency against acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitute a corrupt practice.
13. Though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is obvious that a sharp and clear-cut dividing line cannot be drawn to distinguish the one from the other. In discussing the distinction between the private character and the public character, sometimes reference is made to the 'man beneath the politician' and it is said that if a statement of fact affects the man beneath the politician it touches private character and if it affects the politician, it does not touch his private character. There may be some false statements of fact which clearly affect the private character of the candidate. If, for instance, it is said that the candidate is a cheat or murderer there can be no doubt that the statement is in regard to his private character and conduct and so if the statement is shown to be false, it would undoubtedly be a corrupt practice. Similarly, if the economic policy of the party to which the candidate belongs or its political ideology is falsely criticised and in strong words it is suggested that the said policy and ideology would cause the ruin of the country, that clearly would be criticism, though false, against the public character of the candidate and his political party and as such, it would be outside the purview of the statute. But there may be cases on the borderline where the false statement may affect both the politician and the man beneath the politician and it is precisely in dealing with cases on the borderline that difficulties are experienced in determining whether the impugned false statement constitutes a corrupt practice or not. If, for instance, it is said that in his public life, the candidate has utilised his position for the selfish purpose of securing jobs for his relations, it may be argued that it is criticism against the candidate in his public character and it may also be suggested that it nevertheless affects his private character. Therefore, it is clear that in dealing with corrupt practices alleged under S.123(4) where we are concerned with border-line cases, we will have to draw a working line to distinguish private character from public character and it may also have to be borne in mind that in some cases, the false statement may affect both the private and the public character as well."

A perusal of the poster Ex.P.1, which has been reproduced earlier above in extenso, prima facie shows that most of the allegations contained therein have relation to the personal character and conduct of the petitioner. Inter alia, the said poster portrays the petitioner as misleading the innocent villagers and befooling people for 15 years. He has been accused of not associating with the persons of 'Ghirh' community to which he belongs. He has been also branded as a deceiver. He has been specifically accused of deceiving a very poor old man. It is alleged in the poster that he likes to be in the company of rich persons and hates the poor. He has been also portrayed as a

person who would meet the people in rejoicing and not in grief. It is not necessary to reproduce over again the contents of the poster Ex.P.1. A thorough reading of the allegations as contained in the poster clearly shows that personal character and conduct of the petitioner has been assassinated.

It is pointed out by the learned counsel for the petitioner that such like posters were distributed by the respondent personally and through others, with his consent. He has emphasised that assuming without conceding that the posters like Ex.P.1 were not got printed by the respondent but in case the same are proved to have been distributed by him or by other persons with his consent, the same would amount to publication. He has drawn my attention to a decision of the Supreme Court in *Prabhu Narayan v. A. K. Srivastava* (AIR 1975 SC 968). He has specifically drawn my attention to paragraph 4 of the said judgment which is reproduced hereunder:—

“On behalf of the appellant it was made clear that the only charge made in the petition was the charge of publication of the pamphlets and not their printing and evidence regarding the printing was relied upon only to corroborate the evidence regarding distribution of the pamphlets. It is obvious, that when section 123(4) speaks of publication it means distribution. Mere printing of the pamphlets would not fall under section 123(4). Therefore the failure to give particulars of the printing cannot lead to the dismissal of the petition. Nor could evidence regarding it be shut out.....”

It may be pointed out that the aforesaid view has been also approved by the Supreme Court in a later decision in *Virendra Singh vs. Vimal Kumar* (AIR 1976 SC 2169).

It is contended by the learned counsel for the petitioner that the respondent, his agent as also other persons with his consent distributed the posters like Ex.P.1, in the constituency. The necessary details regarding the contents of the poster and its impact on the voters have been given in various paragraphs of the election petition. In reply to the election petition, the respondent with rare exceptions has given vague and evasive reply to the allegations. The learned counsel for the petitioner has referred to the statements of various witnesses. He has also referred to various facts and circumstances to substantiate his plea.

Mr. S. S. Mittal, learned counsel for the respondent, has vehemently argued that the allegations made against the respondent are baseless and a set of concoction. He has pointed out that the witnesses examined by the petitioner are interested ones and no reliance can be placed on their testimony. He has further pointed out that the cassette which contains certain speeches is not admissible in evidence. It is further pointed out by him that the cassette containing the tape-recorded speeches is a document and had to be submitted at the time of filing of the election petition. His contention is that the poster Ex.P.1 does not contain any allegations of corrupt practices. According to him, the poster was got printed by Parma Nand, the brother of Kanshi Ram (contesting candidate) and that the respondent cannot be blamed for the same.

I have heard the arguments of the learned counsel for the parties at length. Reference has also been made to numerous decisions, but it is not necessary to refer to all of them.

As pointed out earlier above, the contents of the poster Ex.P.1 are such that the personal character and conduct of the petitioner is assassinated. In his cross-examination, the petitioner has asserted that the votes of ‘Ghirh’ community in the constituency may be about 65 per cent and that he belongs to ‘ghirh’ community. P.W. 2 Shri Som Parkash Sarotri has admitted that the posters like Ex.P.1 were printed in his press. He has further asserted that the manuscript of the poster was given to him for printing by Kanshi Ram, who was one of the contesting candidates. Such like posters were delivered to Kanshi Ram. P.W. 19 Nek Ram has deposed that the respondent had held an election meeting in his village on May 12, 1982 and in that meeting posters like P.1 were distributed by the respondent. It is further asserted by him that the respondent addressed the meeting and said that these posters depicted the deeds of the petitioner and that they should cast their votes in favour of the respondent. In his cross-examination, the witness stated that a poster like P.1 was also given to him. Nothing substantial has been extracted from

the witness in his cross-examination. Similarly, P.W. 20 Gian Chand, who is a Panch of Gra. 1 chayat, malan has stated that the respondent held an election meeting on May 12, 1982 and there were about 40/50 persons in the said meeting. He has further asserted that the posters containing "20-Point Programme" were distributed by the respondent. According to him, those posters were like Ex. P.1. In his cross-examination, the witness asserted that the respondent did not only distribute the posters like Ex.P.1 but also read the same. Again in his cross-examination, the witness stated that Kanshi Ram was telling us that he and the respondent were one. He also deposed that Kanshi Ram used to be with Shri Bhatia. P.W.21 Prem Chand has stated that the respondent came to his village in May, 1982 and distributed the posters like Ex.P. 1 containing "20-Point Programme". He has corroborated the fact that the respondent was asking the people to read the posters like P.1. which depicted the deeds of the petitioner. In his cross-examination, the witness admitted that he was a supporter of the Congress Party and also worked as a counting agent of the petitioner. Even R.W. 4 Jaishi Ram in his cross-examination has admitted that the respondent (Shri Bhatia) had been distributing the posters like Ex. P.1. As such, it cannot be disputed that besides others the posters had been distributed by the respondent himself.

I am conscious of the fact that election petitions where corrupt practices are imputed must be regarded as proceedings of a quasicriminal nature wherein strict proof is necessary and the burden is heavy on him who assails an election which has been concluded. It may, however, be pointed out that precedence of legal proposition are useful and binding but the variety of circumstances and peculiar features of each case cannot be identical with those in others and judgments of Courts when and why a certain witness has been accepted or rejected can hardly serve as binding decisions. The credibility of evidence depends on the facts and circumstances of each case. It may also be pointed out that in a charge of publication of posters, it is not necessary that their printing and evidence regarding the printing was always necessary. In the present case, there are circumstances which indicate that the respondent had also played some part in getting the posters like Ex.P.1 printed. The evidence on record establishes that the posters like Ex. P.1 were distributed by the respondent himself. Since I have believed this fact, I do not feel the necessity of discussing the evidence regarding the distribution of the posters like Ex. P.1 by other persons with his consent.

As stated by the petitioner, 65 per cent of the voters in the constituency belong to 'ghirth' community. The petitioner as also the respondent both belong to the same community. In the posters like Ex.P.1, allegations were made against the petitioner that he hated the persons belonging to 'ghirth' community and branded them as having no brain. As such, it can be reasonably inferred that the voters belonging to the said community were adversely affected by such publicity to the detriment of the interest of the petitioner in the election. There are circumstances on record to indicate that no doubt the posters like Ex.P.1 were printed in the name of Parma Nand, the brother of Kanshi Ram, but in fact such posters were distributed by the respondent. It has come in the statement of Parma Nand that he never got such like posters printed nor did he pay for the printing of the same. It may be repeated that I am fully satisfied that the respondent had distributed the posters like Ex. P.1. I am inclined to keep the cassette containing tape recorded speeches as also the photographs produced by the witnesses of the petitioner out of consideration since I have already concluded that the posters P.1 contain statement of facts which are false and are believed to be false and not believed to be true by the respondent, in relation to the personal character and conduct of the petitioner. I am further satisfied that the posters contain false statement of facts calculated to injure the personal conduct and character of the petitioner with a view to prejudice the prospects of his election. Consequently, it is held that the charge for the commission of corrupt practice within the meaning of section 123(4) of the Act levied against the respondent with respect to the publication of the posters like Ex.P.1 stands proved.

In view of the above discussion, issues No. 2, 3, 4 and 5, which are connected with issue No. 1 stand determined and are decided in favour of the petitioner.

The inevitable result that follows from the aforesaid discussion is that the election of the

respondent is declared as void under section 100(1)(b) of the Act. Keeping in view the number of witnesses examined and the days consumed in finally deciding this election petition, the total amount of costs payable by the respondent to the petitioner is fixed at Rs. 2,000. The election petition is accordingly disposed of.

It is directed that the substance of this decision be intimated to the Election Commission as also to the Speaker of the Himachal Pradesh Legislative Assembly forthwith and that an authenticated copy of this decision be also sent to the Election Commission, at the earliest.

Sd/-
H. S. THAKUR,
Judge.

Attested:

Sd/-
Registrar,
High Court of Himachal Pradesh.

By order,
DHARAM VIR,
Under Secretary,
Election Commission of India.

